IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 38537 of 2001(K)

PETITIONER:

K.V.JOSEPH,
KUNNUMPURATH HOUSE,
KADAKKARAPPILLY,
ALLEPPEY DIST.

BY ADV. SRI.S.ABDUL SALAM
SRI.ANTONY MUKKATH

RESPONDENTS:
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1. THE DEPUTY TAHSILDAR,(R.R.)
CHERTHALA.

2. THE EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS
WELFARE FUND BOARD, HARIPPAD.

3. THE STATE OF KERALA, REP. BY CHIEF
SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

R1&3 BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN
R2 BY ADV. SMT.I.SHEELADEVI, SC,KMTWF BOARD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.63237/2001 IN O.P. NO.38537/2001

DISPOSED OF VIDE JUDGMENT:

23.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF R.R. NOTICE IN FORM NO.1 DT.21.11.2001 ISSUED BY R1.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.38537 of 2001

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Dated this the 23rd day of November, 2007.

JUDGMENT

Heard Sri.S.Abdul Salam, counsel appearing for the petitioner. The petitioner is challenging Ext.P1 revenue recovery proceedings by which an amount of Rs.53,100/- is sought to be recovered from the petitioner towards arrears of Motor Transport Workers Welfare Fund. The only case of the petitioner is that even though contribution was demanded and recovered from the petitioner for the assessment year 1997-98, petitioner is not aware of demand for subsequent two years which is now sought to be recovered vide Ext.P1. Even though separate counter affidavits are filed by the Executive Officer as well as by the Under Secretary to Government, no useful purpose is served by filing these counter affidavits. All what is stated in the counter affidavits is that petitioner has been served with provisional determination and final determination orders. However, neither copy of the adjudication order is produced which petitioner claims he has not received, nor the facts found are stated based on which demand is raised. In the normal course a case of this nature should be defended either by producing the adjudication order or by stating the result of enquiry, the

number of employees found engaged and the wage register based on which demand is raised. I am constrained to hold that both the authorities have acted totally irresponsibly in filing counter affidavits which do not disclose any material to assist the court to decide the issue raised. All what is served in filing the counter affidavit is only a technical compliance of filing a counter affidavit, reading of which only has resulted in waste of time of this court. Since petitioner has not denied stage carriage operation during the years for which demand is raised, obviously he is liable to pay contribution. However, it is conceded by petitioner and the respondents that the demand for 1997-98 was only Rs.11,000/-. I do not know on what basis more than four times is demanded for the immediately succeeding two years. Obviously the Executive Officer would have adopted higher number of employees as engaged by petitioner for subsequent years or atleast doubling of wages for the existing employees for whom demand is raised for earlier years. The contribution at double the amount demanded for the immediately preceding year cannot be justified without doubling wages or increasing number of workers. As stated above, no facts are stated even though two authorities have taken pains to come down to Ernakulam and file counter affidavits. The O.P. cannot be rejected for the reason stated in the counter affidavit. In the circumstances, O.P. is disposed of directing the

second respondent to issue copy of the adjudication order to the petitioner within one week from the date of production of copy of judgment by him. If he has objections against the same either in regard to number of employees, their identification or their wages, he is free to file objections and if objections are filed within two weeks from the date of receipt of copy of this judgment, then there will be direction to the second respondent to treat the order as proposal and complete fresh adjudication after hearing the petitioner within one month thereafter. If petitioner has remitted Rs.18,000/- in terms of interim order dated 21.12.2001, the stay order will continue for another two months and thereafter recovery will be based on adjudication order or revised adjudication order issued as directed above.

C.N.RAMACHANDRAN NAIR
Judge

pms